

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
June 9, 2009 Session

**IN RE Lavanie L.**

**Appeal from the Juvenile Court for Knox County  
No. 57107 Timothy E. Irwin, Judge**

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**No. E2008-02622-COA-R3-PT - FILED OCTOBER 8, 2009**

This appeal concerns the termination of parental rights. The Tennessee Department of Children's Services ("DCS") filed a petition seeking to terminate the parental rights of Adeline Dieujuste ("Mother") to the minor child, Lavanie L.<sup>1</sup> ("the child"). After a trial, the court terminated Mother's parental rights because of abandonment; substantial non-compliance with the permanency plan; failure to remedy persistent conditions; and the best interest of the child. Mother appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court  
Affirmed; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

James Corcoran III, Knoxville, Tennessee, for the Appellant, Adeline Dieujuste.

Susan D. Kovak, Knoxville, Tennessee, for the Appellee, Department of Children's Services.

Mary L. Ward, Knoxville, Tennessee, Guardian Ad Litem.

**OPINION**

**I.  
BACKGROUND**

A review of the Record reveals that Mother gave birth to Lavanie L., D.O.B. 3/20/2000, when she was fourteen. Mother left the child's father because he physically abused her. The child's father was later jailed in Florida on six counts of sexual assault against a child under the age of six. None of these counts were in regards to Lavanie L. Afterwards, Mother lived with her mother and later with a sister for a number of years. In 2004, she moved to Wisconsin with her boyfriend.

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<sup>1</sup> The first name and last initial of the minor child will be used to protect her anonymity.

Mother left Wisconsin after the boyfriend allegedly molested the child. On her way back to Florida, Mother stopped in Tennessee to visit an acquaintance, Walter Hutcheson. While in Tennessee, she and Hutcheson contacted DCS about the molestation of the child by the boyfriend, but DCS was unable to help because Mother was on her way back to Florida. At some point in 2005 or 2006, Mother moved to Illinois. She then moved to Tennessee in 2007 after receiving a job offer from Hutcheson to work as a bookkeeper in his CPA business. At this time, Mother also began working as an exotic dancer at an establishment called the Emerald Club. At the time of the termination hearing, Mother had, unbeknownst to DCS, recently moved back to her sister's home in Florida.

DCS first became involved with Mother in February 2007 after receiving reports from the child's former school in Illinois that she was often tardy, dirty, and smelled of urine. The child came into DCS custody on May 3, 2007, based on initial allegations of neglect and abandonment.

The night before she was taken into DCS custody, Mother left the child in the care of a neighbor while Mother went to work at the Emerald Club. Mother did not come back home that evening, and the neighbor called the apartment manager to open Mother's apartment to get school clothing for the child. When asked about her whereabouts the night before, Mother claimed that she dropped off one of Hutcheson's clients at the airport after her shift at the Emerald Club, and her car broke down on the way home. She was unable to provide DCS with a credible explanation for her failure to call the neighbor. When DCS workers visited Mother's apartment, the apartment was hot, littered with trash and clothing, and reeked of urine. Dog feces was also found on the floor. The child's room only contained a blow-up mattress with no sheets or pillows.

The child told DCS workers that she was often left alone in the apartment. She suffered from bed-wetting and an eye injury, and she had not had a physical exam in years. She also never received any counseling for her previous sexual abuse.

DCS and Mother developed a permanency plan ("May Plan") on May 16, 2007 with a goal of family reunification by November 16, 2007. The May Plan required Mother to:

- Comply with court orders and DCS requests, including random drug screens;
- Verify to DCS her completion of permanency plan goals and sign releases for information to DCS;
- Pay \$40 per month in child support until child support was determined by the court;
- Arrange appropriate after-school and summer care for the child;
- Maintain safe, appropriate, and clean housing;
- Avoid association with boyfriend or other criminals;
- Obtain and verify a legal source of income;
- Develop a support system;
- Receive therapy at DCS expense.

At a hearing on August 20, 2007, the juvenile court entered an Order requiring Mother to take a hair follicle drug screen and to schedule a psychological evaluation. Although the court found

Mother's progress with the May Plan to be minimal, the parties agreed that upon completion of the psychological evaluation, drug screen, and two consecutive visits, Mother could begin unsupervised visitation. The hair follicle drug screen subsequently came back positive for cocaine and marijuana. Another hearing was held on November 1, 2007, at which time the court found that Mother continued to make little progress and declined to expand Mother's visitation until she completed alcohol and drug assessment and entered counseling.

A second permanency plan ("November Plan") was developed on November 28, 2007. The November Plan was substantially similar to the May Plan, except that it required another alcohol and drug assessment in the event Mother tested positive on any drug screen. Like the May Plan, the November Plan required Mother to submit to random drug screens. The November Plan also required intake counseling and a "5-axis diagnosis." Her child support payments were also raised to \$236 per month.

Despite the requirements of the November Plan, Mother refused drug screens on May 19, 2008, and June 2, 2008. Additionally, she missed her counseling intake appointments. Although Mother made no voluntary child support payments, \$1,549 was intercepted from her 2008 income tax return.

During the development of the November Plan, Mother was unemployed. Although she claimed to be living off savings, she was unable to provide proof of any savings to her case worker, Laura Leveille. Mother later told Ms. Leveille that she had enrolled in school, but Mother was unable to provide a class schedule. In addition to failing to maintain employment, Mother also failed to inform Ms. Leveille of her move back to Florida.

#### *The termination proceeding*

The Petition to Terminate Parental Rights was filed on April 17, 2008. The termination proceeding took place on October 8, 2008, and the Final Order was entered on November 3, 2008.

At the termination proceeding, Ms. Leveille testified that Mother did not visit regularly and often arrived up to 45 minutes late when she did visit. Ms. Leveille stated that at first the child would cry when Mother did not show up. Eventually, however, the child became disinterested in Mother's visits and was not surprised when Mother did not visit. Because the visits were to be supervised, Ms. Leveille requested that Mother and Lavanie L. speak in English instead of their native language, Creole. According to Ms. Leveille, the child was thriving in foster care during this time. Ms. Leveille further testified that the child's performance in school had improved over the prior year. Ms. Leveille also explained that Mother failed to maintain regular contact with her and neglected to submit to drug screens on October 22, 2007,<sup>2</sup> May 19, 2008, and June 2, 2008.

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<sup>2</sup> Although Mother took the October drug screen, she refused to allow a DCS representative watch her give the

(continued...)

On cross-examination, Ms. Leveille stated that Mother never revealed to her a family history of mental illness, nor did she observe any signs of mental illness in the Mother's behavior. Ms. Leveille also admitted that DCS never contacted anyone at Mother's church to determine whether she was finding support there.

During the trial, Mother testified that she was not currently working. She offered no explanation for her unemployment, and she admitted nothing prevented her from working. She conceded that her failure to keep appointments prompted the cancellation of counseling that was required by the permanency plans. Mother was also unable to give any explanation for her refusal to take the requested drug screens. Although she was highly evasive about her past drug use, she ultimately denied having used cocaine in the previous two years despite the results of the initial hair follicle test. Nevertheless, she confirmed being arrested for possession of cocaine as a juvenile and as recently as 2004.

When asked about the child's eye injury, Mother stated that she had sought medical care two years earlier in Florida, but that the injury did not need any follow up. She further testified that she did not think that the child's bed-wetting problem was serious enough to warrant treatment. She also conceded that she had not gotten counseling for the child for the sexual abuse that the child suffered from Mother's boyfriend. Mother claimed to not understand why the child should not be with her, and she asserted that she had done nothing wrong.

During a break in Mother's testimony, the trial court ordered her to undergo a urine drug test. She refused to take the test and claimed that she could not urinate while being watched. The trial court explained to her that it was protocol to observe her during the test. Although Mother was given another opportunity to take the test before closing arguments, she refused.

Dr. Lennox Abbot testified by telephone about the August 30, 2007, hair follicle screen that was positive for cocaine. Dr. Abbot explained that the hair follicle had been received and signed for by one of his technicians at the Atlanta, Georgia, testing facility. The test was admitted by the trial court despite Mother's objections concerning the sufficiency of the chain of custody.

On rebuttal, Ms. Leveille testified that after Mother had alluded to the possibility that some people in her building were undesirable neighbors, Ms. Leveille offered to help her find another residence. Despite the offer, Mother ultimately remained in her apartment. Ms. Leveille also testified that she never tried to dissuade Mother from being an exotic dancer, but she desired to get the child into a more "positive community."

## **II. RULING IN THE TRIAL COURT**

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<sup>2</sup>(...continued)

urine sample. This breach in protocol rendered the results useless.

Following the trial on DCS's petition, the trial court made detailed and comprehensive findings of fact as follows:

1. The minor child was placed in the temporary custody of DCS on May 3, 2007, after she had been left alone all night and the apartment was found to be in an unsanitary condition.
2. The initial permanency plan required Mother to clean up her residence and maintain suitable housing with appropriate furnishings. She was to develop a supervision plan to ensure that her child would be properly cared for when she was working or otherwise unavailable, pass random drug screens, participate in individual counseling, maintain her income, and pay child support.
3. After Mother failed to cooperate with random drug screens, the court ordered her to submit to a hair follicle drug screen, the results of which were positive for cocaine and marijuana.
4. Mother was only minimally compliant with the permanency plan requirements; she attended most of the visits with the child, although not on time and not every visit.
5. The hair follicle drug screen was the only drug screen that Mother completed during the entire foster care process, even though she was ordered to complete subsequent drug screens and given several opportunities to do so.
6. Mother never participated in counseling. Although DCS made arrangements for her to receive assessments and therapy at no cost to her.
7. Mother failed to provide proof of legal income and employment.
8. Mother has failed to confirm a stable place of residence.
9. The child's father took her to the State of Georgia and kept her from Mother for about eight (8) months without Mother knowing of the child's whereabouts. When she eventually learned of the child's whereabouts, she did not make any efforts to retrieve her. The child's father is jailed presently in the State of Florida awaiting trial on charges of sexual assault on a child under the age of six (6).
10. The child was sexually abused by Mother's live-in boyfriend while living in Wisconsin in May 2004. The incident was reported to the authorities in Wisconsin, but Mother and the child left Wisconsin before any investigation began. The incident was also reported to the Tennessee authorities, but while DCS investigated the

incident, Mother and child moved to Florida, where the investigation was ultimately completed.

11. Mother failed to get any counseling for the minor child after the sexual abuse and any follow-up medical treatment after a serious eye injury that required extended hospitalization.

12. Mother was capable of gainful employment evidenced by the interception of an IRS tax refund, but she did not make a single, voluntary child support payment during the minor child's entire foster care stay.

Based upon these findings of fact, the trial court made the following conclusions of law:

1. The Mother has abandoned her child by willful failure to support or make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding the filing of the petition to terminate parental rights.

2. The child was removed by court order for a period of six (6) months; the conditions which led to her removal still persist; other conditions persist which in all probability would cause the child to be subjected to further abuse and neglect and which prevent the child's return to the care of Mother; there is little likelihood that these conditions will be remedied at an early date so that the child can be returned to Mother in the near future; the continuation of the legal parent and child relationship greatly diminishes the child's chances of early integration into a stable and permanent home.

3. Mother failed to substantially comply with the reasonable responsibilities set out in the Permanency Plan related to remedying the conditions which necessitated foster care placement.

4. Mother has not adjusted the circumstances, conduct, or conditions to make it safe and in the child's best interest to be in her home despite reasonable efforts by available social services agencies for such duration of time that lasting adjustments do not reasonably appear possible.

The trial court terminated Mother's parental rights. The court admonished Mother, "I just don't find you truthful or credible." The trial court further found that DCS had made reasonable efforts to reunite Mother and the child. It also credited the case worker's testimony that the child was thriving in her foster environment, and it determined that it was in the best interest of the child to remain in foster care. Mother filed a timely appeal.

### **III. ISSUES**

The issues for review are restated as follows:

- A. Whether the trial court erred by terminating Mother's parental rights on the ground of abandonment for failure to pay child support in the four months preceding the filing of the termination petition when Mother's child support obligations were fulfilled by an intercepted tax return.
- B. Whether the trial court erred by finding substantial non-compliance with Mother's Permanency Plan responsibilities.
- C. Whether the trial court erred by finding that Mother failed to remedy persistent conditions in her life that prevented the child's return.
- D. Whether the trial court erred by determining that termination of Mother's parental rights was in the child's best interest.
- E. Whether the trial court erred by allowing DCS to sanction Mother for not complying with a drug screen that was essentially a discovery request.
- F. Whether the trial court erred by admitting a hair follicle drug screen without an established chain of custody.

### **IV. STANDARD OF REVIEW**

Parents have a fundamental right to the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578-579 (Tenn. 1993). However, parental rights may be terminated if the State proves by clear and convincing evidence that termination is justified under the applicable statute and is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The heightened burden of proof ensures that "there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *In re Valentine*, 79 S.W.3d at 546. The evidence "should produce in the fact-finder's mind a firm belief or conviction regarding the truth of the proposition sought to be established." *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002).

The findings of fact of a trial court are reviewed *de novo* upon the record with a presumption of correctness. Tenn. R. App. P. 13(d). However, the heightened burden of proof in these types of cases demands a further inquiry. If it is determined that the trial court's findings of fact are supported by a preponderance of the evidence, then the court must decide whether "the combined weight of the individual facts provides clear and convincing evidence supporting the trial court's ultimate factual conclusion." *In re Z.J.S.*, No. M2002-02235-COA-R3-JV, 2003 WL 21266854, at

\*10 (Tenn. Ct. App. M.S., June 3, 2003); *In re M.J.B.*, 140 S.W.3d 643, 654 (Tenn. Ct. App. 2004) (citing *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002)). If the trial court has not made a specific finding of fact on a particular matter, the facts in the record will be reviewed purely *de novo*. *In re Valentine*, 79 S.W.3d at 546. All issues of law are reviewed *de novo* with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

Finally, any one of the statutory grounds for termination of parental rights listed in Tenn. Code Ann. § 36-1-113(g) (Supp. 2008) is sufficient to support termination of parental rights where the termination is in the best interest of the child. *In re Audrey S.*, 182 S.W.3d 838, 862 (Tenn. Ct. App. 2005).

## V. DISCUSSION

### A.

Whether the trial court erred by terminating Mother's parental rights on the ground of abandonment for failure to pay child support in the four months preceding the filing of the termination petition when Mother's child support obligations were fulfilled by an intercepted tax return.

Tenn. Code Ann. § 36-1-113(g)(1) states that termination may be based on “[a]bandonment by the parent or guardian, as defined in § 36-1-102 . . . .” Section 36-1-102(1)(A) states, in pertinent part:

For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, “abandonment” means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have ***willfully failed to make reasonable payments toward the support of the child***[.]

Tenn. Code Ann. § 36-1-102(1)(A)(i) (2005) (emphasis added). In the context of the present case, the four-month period was from December 17, 2007, to April 17, 2008.

Mother argues that Tenn. Code Ann. § 36-1-113(g)(1) does not require that child support payments be made willfully or voluntarily. Instead, the mental state of the parent becomes an issue only if there is a willful *failure* to pay. In other words, as long as a payment is made, it does not matter *how* that payment was made, nor does it matter whether it was made willingly. Thus, Mother claims she is not subject to this statute because the child support payment was intercepted from her tax return.



We find little merit in Mother's argument. As far as this court is concerned, she did willfully fail to make her child support payments. As a result, the State had to resort to other measures and intercept her income tax return to recoup those payments. Furthermore, her failure to pay child support is particularly disturbing because she had a tax refund for the State to intercept, showing that she had earnings from which she could have paid support. Due to her willful failure to make appropriate child support payments for a period of four months preceding the filing of the Petition for Termination, we affirm the trial court's ruling that Mother was in violation of Tenn. Code Ann. § 36-1-113(g)(1).

B.

Whether the trial court erred by finding substantial non-compliance with Mother's Permanency Plan responsibilities.

Tenn. Code Ann. § 36-1-113(g)(2) provides that parental rights may be terminated if a parent is substantially noncompliant with the statement of responsibilities in a permanency plan. To establish substantial noncompliance, the trial court must make a two-step inquiry. First, the requirements of the permanency plan must be "reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody." *In re M.J.B.*, 140 S.W.3d at 656; *In re Valentine*, 79 S.W.3d at 547. If the trial court fails to make such a finding, this court should review the issue *de novo*. *In re Valentine*, 79 S.W.3d at 547. Second, the trial court must find that the parent's noncompliance was "substantial." *Id.* Substantial noncompliance is "measured by both the degree of noncompliance and the weight assigned to that particular requirement" in the permanency plan. *In re Z.J.S.*, 2003 WL 21266854, at \*12; *In re Valentine*, 79 S.W.3d at 548.

Mother argues that the requirement for drug screening was not reasonably related to the reasons leading to the child's removal from her custody. She points out that the child was originally taken away because of "environmental neglect and the mother failing to provide appropriate care and supervision." At the time the first permanency plan was developed, DCS had no direct evidence of drug abuse. Mother makes a similar "non-relatedness" argument regarding the mental health exam requirement, noting that she told DCS at the outset that there was no history of mental health issues in her family.

Mother further contends the requirement that she "explore activities and support in her community" was somehow meant to hinder, rather than assist her, in regaining custody. She also claims DCS "pressured" her to move to another area because "all the Department wanted Mother to do was quit associating with all of her friends and business associates. . ." She also complains about DCS requesting that she only speak in English during the visitation sessions.

DCS responds by pointing out that Mother refused to take several drug screens, including one ordered by the court at the termination proceeding. She was late or absent from many of her scheduled visits with the child. She failed to provide proof of steady employment. She did not maintain stable housing, and she had returned recently to Florida at the time of the proceeding. DCS also argues it showed no bias towards Mother's occupation or culture, and Mother was the one who

first expressed reservations about those who surrounded her. DCS asked her to speak in English only because the visits were to be supervised, and an interpreter was not needed because both were fluent in English.

We find little merit in Mother's arguments on this issue. In *In re Valentine*, the Tennessee Supreme Court explained:

A trial court must find that the requirements of a permanency plan are "reasonable and related to remedying the conditions [that] necessitate foster care placement." Tenn. Code Ann. § 37-2-403(a)(2)(C). We hold that this finding must be made in conjunction with the determination of substantial noncompliance under § 36-1-113(g)(2).

79 S.W.3d at 547. (internal citations omitted). In this case, the trial court's Final Order provided:

The initial permanency plan had very simple responsibilities that should have been easy for Respondent to accomplish. . . . She needed to pass random drug screens to rule out substance abuse as a contributing factor and to participate in individual counseling.

Therefore, we find that it was reasonable for DCS to require a drug screen to ensure that drugs were not a contributing factor to Mother's failure to provide appropriate care and supervision. While it is true that DCS had no direct evidence of drug use when developing the first permanency plan, it was reasonable for DCS to require such testing as an initial precaution considering the circumstances surrounding the child's initial removal from Mother's custody. Not only was Mother living in an apartment that was dirty, reeked of urine, and contained dog feces on the floor, but she also abandoned the child overnight without any sufficient explanation of her whereabouts. Considering the degree of Mother's disregard for her living arrangements and daughter, it is reasonable that DCS wanted to ensure that drug use was not involved.

In any event, by the time the November Plan was developed, all parties were aware that Mother failed the hair follicle drug screen. Although Mother now contests the chain-of-custody of that test, there is no question that at the time the November Plan was developed, DCS reasonably believed that Mother recently used cocaine. Thus, the November Plan requiring drug screens was certainly reasonably related to remedying what DCS believed at the time to be a drug problem. Mother's subsequent refusal to submit to drug screens only serves to underscore that such tests were reasonable and related to Mother's parenting issues.

Similarly, we find that requiring Mother to attend mental health therapy was reasonably related to regaining custody of the child, regardless of whether there were mental health issues in her family. Even at trial, it was clear from Mother's testimony that she had very little insight into why her child was in State custody. It was also clear that her past relationships with men were tumultuous resulting in abuse of both her and the child. Based on such a history and her lack of

understanding concerning why the child was removed from her custody, it is apparent that mental health therapy could have been beneficial to Mother and had a positive effect on her reunification with the child.

Although not stated so directly, the rest of Mother's arguments concerning the substantial compliance issue can be boiled down into the following refrain: DCS failed to provide reasonable efforts to assist Mother in regaining custody. We must disagree. As this court previously observed:

[r]eunification of a family . . . is a two-way street, and neither law nor policy require the Department to accomplish reunification on its own without the assistance of the parents. Parents share the responsibility for addressing the conditions that led to the removal of their children from their custody. They must also make reasonable efforts to rehabilitate themselves once services have been made available to them.

*In re Randall B., Jr.*, No. M2006-00055-COA-R3-PT, 2006 WL 2792158, at \*6 (Tenn. Ct. App., M.S., Sept. 28, 2006) (internal citations omitted). In the instant case, the record demonstrates that Mother failed to make a reasonable effort to comply with the permanency plans. Although she attended most of the visitation sessions with the child, she was often late. Those visitations were essentially the only part of her permanency plans that she complied with to any degree.

The most troubling aspect of Mother's non-compliance with the plans concerns her drug screens. The hair follicle drug screen showing recent cocaine use was the only drug screen that she took during the entirety of the child's foster care, despite being asked to take drug screens on October 22, 2007, May 19, 2008, and June 2, 2008. In fact, she refused to take a drug screen on the day of the termination hearing. Mother was aware that her refusal to take the drug tests would be the equivalent of testing positive. The trial court's Final Order stated that "this court will not reunite children with parents who are active drug users. . . . Based upon the facts in this case, the court can draw no other conclusion with regard to Respondent." We certainly concur.

Mother also never participated in mental health counseling. Although DCS made arrangements for her to receive an assessment and therapy at no cost to her, she failed to keep so many of the appointments that the provider eventually refused to see her anymore. Additionally, Mother failed to provide proof of her ability to support the child. At the time of trial, she admitted that she was not working and failed to provide a credible explanation for being unemployed.

Furthermore, Mother failed to provide DCS with requested information. During the few months she claimed to be enrolled at a community college, she failed to supply DCS with her schedule. She also was unable to provide DCS with an accounting of the "savings" she was supposedly living off of while in school. Perhaps most astonishing, she moved back to Florida without informing DCS, and DCS officials did not learn of the move until Mother announced it on the stand during the termination hearing. Although in 2007, she improved the living conditions of the apartment where the child was found, neither DCS nor the trial court was given any information concerning the appropriateness of her new living conditions in Florida.

In light of the findings described above, we hold that the evidence clearly and convincingly supports the trial court's finding that Mother's noncompliance with her permanency plans was substantial.

C.

Whether the trial court erred by finding that Mother failed to remedy persistent conditions in her life that prevented the child's return.

Pursuant to Tenn. Code Ann. § 36-1-113(g)(3), termination of parental rights is appropriate when [t]he child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

- (A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s) still persist;
- (B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
- (C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home[.]

Tenn. Code Ann. § 36-1-113(g)(3)(A), (B) & (C). (Supp. 2008).<sup>3</sup> Termination of parental rights under the above statutory section requires clear and convincing evidence of all three factors. *In re Valentine*, 79 S.W.3d at 550. Both Mother and DCS contend that their previous arguments concerning whether there was substantial non-compliance also support their positions regarding whether Mother failed to remedy persistent conditions in her life that prevented her child's return.

Based on our above analysis concerning Mother's substantial noncompliance with her permanency plan, we must agree with the trial court that the conditions that led to the child's removal still clearly and convincingly exist. Mother has yet to acknowledge responsibility for her daughter's removal; she refuses to be forthcoming about her drug use; she continues to lead a nomadic lifestyle; she is unemployed and unable to articulate how she would care for the child; she failed to keep visitation and therapy appointments; she neglected to keep DCS informed of her situation; and, most importantly, she failed to show through her actions that her daughter is her most important priority.

Regarding factor (B), Mother has been given ample time and opportunity to remedy her situation, yet she has failed to do so. Thus, we find that the evidence clearly and convincingly shows

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<sup>3</sup> Amendments to the statute effective January 1, 2009, do not relate to the issues raised in this appeal.

it is unlikely that these conditions will be remedied at an early date so that the child can be returned safely to Mother in the near future.

Regarding factor (C), the trial court credited case worker, Ms. Leveille's testimony that the child was thriving in her foster environment. Her performance in school improved, and her needs are being met. In stark contrast, the evidence reveals that Mother has failed to remedy those conditions that originally led to the child being taken into State's custody. Thus, the evidence clearly and convincingly shows that the continuation of the parent-child relationship greatly diminishes the child's chances of early integration into a safe, stable, and permanent home.

Therefore, we hold that Mother has failed to demonstrate, by clear and convincing evidence, that she has remedied the persistent conditions in her life that led to the child's removal. The trial court made no error in its findings on this issue. *See* Tenn. Code Ann. § 36-1-113(g)(3).

D.

Whether the trial court erred by determining that termination of Mother's parental rights was in the child's best interest.

The court considers statutorily defined factors when determining whether termination of parental rights is in the best interest of the child. *See* Tenn. Code Ann. § 36-1-113(c) (2). A court considers, but is not limited to, the following:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i) (Supp. 2008).

Mother cites several reasons claiming that it is the child's best interest to remain with her. She argues that there is a "meaningful relationship" between her and the child because she had been the primary care giver. She also contends that the physical abuse she and her daughter experienced at the hands of men somehow bonded them as "survivors." Further, the two share a bond over their native Creole language. She also claims, without support, the change in caretakers has had a detrimental impact on the child.

DCS responds that any meaningful relationship that once existed now has been significantly reduced as a result of Mother's spotty visitation record. The child is thriving with her foster family, and a return to Mother's chaotic, nomadic life would be detrimental. Coupled with the failure to pay child support, DCS contends that there is clear and convincing evidence that termination of parental rights is in the best interest of the child.

We must agree with DCS that the termination of Mother's parental rights is in the best interest of the child. Mother failed to remedy the conditions in her life that led to the child being placed in foster care. As stated in Ms. Leveille's testimony, any bond that existed between Mother and the child was eroded by Mother's weak visitation record. At the same time, the trial court was very clear that it did not find Mother's testimony to be credible, especially regarding her past drug use. It is well settled that a trial court's assessment of credibility is entitled to "great weight" and will not be disturbed unless there is clear evidence to the contrary. *In re R.M.S.*, 223 S.W.3d 240, 265 (Tenn. Ct. App. 2006). We are satisfied that it is in the child's best interest to remain in foster care because of the trial court's positive assessment of the testimony concerning the foster care placement and its negative assessment of Mother's testimony.

E.

Whether the trial court erred by allowing DCS to sanction Mother for not complying with a drug screen that was essentially a discovery request.

Mother contends that if DCS wanted her to comply with a drug screen, DCS should have filed an Order for Examination pursuant to Tenn. R. Civ. P. Rule 35.01. In the event of noncompliance with the Order, DCS would then have to file a Motion for an Order Compelling Discovery. As a result, Mother asserts that because DCS did not follow the correct procedure, Mother cannot be penalized for refusing the drug screens. Mother also alleges that the trial court erred by insisting that she submit to the May 19, 2008, and June 2, 2008, drug screens because she did not have an attorney at the time.

In this instance, the rules of discovery are irrelevant because Mother had a separate and independent obligation to submit to drug screening under the permanency plans. Furthermore, Mother cites no authority for the proposition that her obligation to submit to drug screens was suspended simply because she had no attorney during this period.

F.

Whether the trial court erred by admitting a hair follicle drug screen without an established chain of custody.

According to Mother, the hair follicle drug screen presented at trial was insufficient to create a proper chain of custody for the evidence; as a result, the hair follicle drug screen was inadmissible.

DCS admits the hair follicle test should not have been admitted because of the faulty chain of custody. Nevertheless, DCS claims it is harmless error. By the time of trial, Mother had refused additional drug screen requests. Thus, those refusals constituted independent evidence that she was not satisfying the requirements of the permanency plans.

In order to admit the hair follicle drug screen as evidence, “the party offering the evidence must either introduce a witness who is able to identify the evidence or must establish an unbroken chain of custody.” *State v. Holloman*, 835 S.W.2d 42, 46 (Tenn. Crim. App. 1992). In this case, the trial testimony showed that the hair sample was taken by a collecting facility in Knoxville, Tennessee, picked up by a courier, and then delivered to a testing facility in Atlanta, Georgia. While there was testimony that the testing facility in Atlanta had picked up the sample, there was no testimony from the Knoxville collecting facility concerning the chain of custody. Accordingly, we hold that the hair follicle drug screen was inadmissible. Nonetheless, the admission of the hair follicle drug screen constitutes harmless error because Mother’s subsequent refusals to take drug screens provided independent evidence that she was not meeting her permanency plan obligations.

**VI.  
CONCLUSION**

1. The trial court's finding that DCS proved, by clear and convincing evidence, that Mother abandoned her child pursuant to Tenn. Code Ann. § 36-1-113(g)(1) is affirmed.
2. The trial court's finding that DCS proved, by clear and convincing evidence, that Mother was in substantial non-compliance with her permanency plans pursuant to Tenn. Code Ann. § 36-1-113(g)(2) is affirmed.
3. The trial court's finding that DCS proved, by clear and convincing evidence, that Mother failed to remedy persistent conditions in her life that prevented the child's return pursuant to Tenn. Code Ann. § 36-1-113(g)(3) is affirmed.
4. The trial court's finding that termination of Mother's parental rights is in the best interest of the child is affirmed.
5. We hold Mother's contention that the trial court erred by allowing DCS to sanction her for noncompliance with drug screens is meritless.
6. We hold that the trial court erred in admitting the hair follicle drug screen, but that such error was harmless.

Therefore, the judgment of the trial court is affirmed in its entirety. Costs on appeal are taxed to the Appellant, Adeline Dieujuste. The case is remanded to the trial court for enforcement of the court's judgment and for collection of costs assessed below, pursuant to applicable law.

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JOHN W. McCLARTY, JUDGE